

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Advancing Broadband Availability Through Digital Literacy Training)	WC Docket No. 12-23
)	

**PETITION FOR WAIVER
OF THE PUBLIC UTILITIES COMMISSION OF NEVADA**

I. INTRODUCTION

The Federal Communications Commission (“FCC”) released on February 6, 2012, a Report and Order and Further Notice of Proposed Rulemaking regarding Lifeline and Link Up Reform and Modernization (FCC 12-11), generally referred to as the “Lifeline Reform Order.” On March 15, 2012, the Public Utilities Commission of Nevada (“PUCN”) voted to open an investigation regarding the Lifeline Reform Order, as well as another recently released FCC order regarding universal service and intercarrier compensation reform. That matter has been designated by the PUCN as Docket No. 12-03019. Pursuant to the Procedural Order issued in Docket No. 12-03019 on April 6, 2012 (“Procedural Order”), parties in the investigation filed comments on May 7, 2012 regarding what actions the PUCN may need to take in response to the Lifeline Reform Order, and reply comments were filed on May 21, 2012.

//

//

II. DISCUSSION

The PUCN submits this Petition for Waiver because Nevada will be unable to modify its current statute or regulations in order to meet the June 1, 2012 deadline to come into compliance with section 54.407(d) and sections 54.410(b)(2) and (c)(2) of the FCC's rules. The PUCN has already requested, in its comments submitted on May 15, 2012 on the United States Telecom Association Petition for Waiver, that the FCC consider granting a limited waiver to Nevada as part of that Petition in order to provide the FCC with the time necessary to act on this Petition while preserving the status quo for Lifeline subscribers in Nevada. The PUCN is submitting this Petition in response to a request from FCC Staff that Nevada's situation be addressed separately. The PUCN is bound by Nevada's Open Meeting Law to deliberate and vote in a public meeting prior to filing a Petition of this nature. This Petition was discussed and voted upon at the PUCN's public meeting on May 23, 2012.

The PUCN submits this Petition to describe with greater specificity the conflict between the PUCN's regulations, the Nevada Revised Statutes ("NRS"), and the FCC's new regulations; to explain what the PUCN anticipates will be required to address the fundamental conflict at issue between Nevada Revised Statutes and the FCC's new regulations; and to provide information about possible alternative solutions to the conflict that the PUCN intends to flesh out in the ongoing PUCN investigation in Docket No. 12-03019.

The heart of the conflict is with NRS 707.480, which requires an eligible telecommunications carrier ("ETC") to automatically enroll its existing customers to receive Lifeline services if those customers are on the list of eligible customers provided by the Department of Health and Human Services twice a year.¹ The provider has only 60 days to

¹ NRS 707.480 provides:

enroll "eligible customers" on the list provided by the Department of Health and Human Services, unless the customer specifically declines Lifeline service with the carrier that provided notice to the customer that the customer was eligible for such service. As such, as the FCC is aware, given that the controlling statute at issue in Nevada essentially requires Nevada ETCs to automatically enroll customers based upon a list from another state agency, this statute does not comport with the FCC's new regulations. For example, the FCC's new regulations would require Nevada's Department of Health and Human Services to receive notice from a prospective subscriber that the subscriber meets certain income-eligibility criteria, as well as require the prospective subscriber to submit a certification form pursuant to 47 C.F.R. § 54.410(d). See 47 C.F.R. § 54.410(b)(2)(i) and (ii). The Nevada statutes currently do not contemplate the Department of Health and Human Services reaching out to potential subscribers of Lifeline service to collect either an income-eligibility notice or a certification form.

1. An eligible provider, within 7 days after determining that a person located in its service area is an eligible customer, shall notify the eligible customer that the eligible customer will receive lifeline or link up services, or both, unless the eligible customer specifically declines to receive the services. The notification must include:

(a) Information about the lifeline and link up services, including, without limitation, the date on which the services will begin and any options or responsibilities that the eligible customer may have related to the receipt of those services;

(b) A self-addressed, postage paid response card which the eligible customer must return to the eligible provider to decline the services; and

(c) A statement that the eligible provider will automatically provide lifeline or link up services, or both, to the eligible customer unless the eligible customer declines the services by timely returning to the eligible provider the response card included with the notification.

2. To decline lifeline or link up services, an eligible customer must return the response card included in the notification provided pursuant to subsection 1 to the eligible provider not later than 10 days before the date on which the services are scheduled to begin.

3. An eligible provider shall begin billing an eligible customer for lifeline or link up services, or both, not later than 60 days after the date on which the eligible provider receives the list of eligible customers from the Department which includes the eligible customer, if the eligible customer has not declined the services.

4. An eligible provider shall continue providing lifeline services to an eligible customer for as long as the eligible customer continues to receive telecommunication services from the eligible provider until the customer or the Department notifies the eligible provider that the customer is no longer eligible for the program. The eligible provider shall discontinue providing lifeline services to an eligible customer if the eligible customer notifies the eligible provider in writing that the eligible customer wishes to discontinue receiving those services.

Because of this fundamental conflict between the NRS and the FCC's regulations, the PUCN requests a waiver for a period of one and a half years, until January 1, 2014, to provide an opportunity for the Nevada Legislature to meet and address necessary changes to the NRS, and to provide time for those changes to be implemented. The Nevada Legislature meets every two years for a Regular Session that lasts 120 days. The next Regular Session will commence early in February 2013 and will end in early June 2013. The Commission has already begun the process of putting together a bill draft request on this issue. However, assuming the issue is considered at all, it will take time for the Legislature to fully vet the proposal, potentially act upon it, and for any resulting legislation to become effective. Given that the Legislature must conduct all of its business in 120 days, a realistic effective date for changes to the NRS is not earlier than June 2013. Assuming that a statutory change is enacted and becomes effective in June 2013, additional months will be necessary for the PUCN to conduct rulemaking proceedings to change existing regulations, and still more time may be necessary for these changes to be fully implemented.

Although the PUCN believes that a permanent change in the NRS is necessary in the long term, in its ongoing investigation in Docket No. 12-03019 the PUCN is already addressing proposals that might be implemented sooner and on a temporary basis. Such proposals would seek to have Nevada designated ETCs continue to comply with Nevada law, but could provide for an extra step that could satisfy the FCC's new regulatory requirements. The PUCN is hopeful that the comments recently filed and the discussion at the continued workshop scheduled for June 4, 2012 will present some feasible short-term options. The PUCN proposes to file an update with the FCC in three months regarding whether there is a feasible short-term solution that would comport with Nevada law and the FCC's new regulations, and when this short-term

solution may be implemented. One possible proposal would involve a PUCN rulemaking and coordinating with another state agency. However, until that agency has had the opportunity to participate in the June 4, 2012 workshop, it is unclear whether the manpower or funds that would be required are available.

III. CONCLUSION

The Public Utilities Commission of Nevada urges the Federal Communications Commission to grant this Petition for a Waiver for a period of a year and a half, until January 1, 2014. The PUCN respectfully requests that the Federal Communications Commission grant this Petition in addition to granting the PUCN a limited waiver as requested in the PUCN's comments filed on May 15, 2012 regarding the Petition of the United States Telecommunications Association. If the Federal Communications Commission deems it appropriate, within three months of the filing of this Petition, the Public Utilities Commission of Nevada will file an update on its progress toward identifying a short-term solution to bring Nevada into compliance, while recognizing that a change in the Nevada Revised Statutes will be required to implement a permanent solution.

Respectfully submitted this 23 day of May, 2012.

THE PUBLIC UTILITIES COMMISSION OF NEVADA


ALAINA BURTENSHAW, Chairman


REBECCA D. WAGNER, Commissioner


DAVID NOBLE, Commissioner